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10/575,297	04/11/2006	Bernd Schessl	2003P01288WOUS	3142

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EXAMINER

CASTELLANO, STEPHEN J

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3781

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/575,297	Applicant(s) SCHESSL ET AL.	
	Examiner /Stephen J. Castellano/	Art Unit 3781	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 May 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 13-30 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 13-30 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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Applicant applies no special definition of the terms: mesh or meshes. In the absence of a special definition, the plain and ordinary definition of mesh and meshes applies to these claims. The figures clearly disclose a horizontal member consisting of a single, linear horizontally oriented wire as reference No. 2 that is associated with the horizontal mesh 2. There are two leader lines labeling reference No. 2 in Fig. 1. So, two elements labeled as reference No. 2 Definition 2b. for mesh *n* defines mesh as a woven, knit or knotted material of open texture with evenly spaced holes in *Merriam Webster's Collegiate Dictionary* tenth edition.

A horizontal mesh would lie in a horizontal plane. The present application does provide support for a horizontal mesh as the bottom wall of basket 1 lies in a horizontal plane and is woven material of open texture with evenly spaced holes. However, there is only one disclosed horizontal mesh, not a plurality. Unfortunately, an error occurred when this application was translated from German to English and inadvertently the incorrect term “horizontal mesh” or “horizontal meshes” was assigned to reference No. 2 rather than a more appropriate term such as “horizontal member.” It is duly noted that applicant states that “the term “mesh” has been used in conjunction with horizontal members 2 shown in Fig. 1-3” (see last 4 lines of page 9 of remarks). Also, applicant states that the meaning of “horizontal mesh” doesn’t require the crossing of wires(see last 4 lines of page 9 of remarks).

However, these attempts to change the meaning of the term “horizontal mesh” to broadly encompass horizontal members are inadequate. Ignoring the plain and ordinary meaning of the term “horizontal mesh” would confuse the issues in the present application as an actual horizontal mesh is shown. When applicant uses the term “horizontal mesh,” the bottom wall of the basket is looked upon as meeting this structure.

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Examiner suggests changing “horizontal mesh” to “horizontal member” and “horizontal meshes” to “horizontal members” in claims and written specification.

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 18-20 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. The mesh of the framework is the crossing of wires and doesn't refer to a single wire. A horizontal mesh would be the horizontal portion of the basket or framework rather than a vertical portion. The framework includes only one tier of horizontal meshes rather than a plurality. Further, the rack is attached to a vertical portion of the mesh not a horizontal mesh. However, the rack is attached to a horizontal wire within the vertical wall of the framework.

Claims 25-26 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. There is support for the horizontal mesh as the bottom of the rack provides adequate structure to be considered a horizontal mesh. The horizontal mesh intersects with first and second vertical wires which extend only above the horizontal mesh. However, there is no support for stating that the holding elements engages the framework at either the first or second

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intersections (where the first vertical wire intersects the horizontal mesh and the second vertical wire intersects the horizontal mesh, respectively). **This is a new matter rejection.**

The 112, sixth paragraph is not invoked by "fixing means."

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 24 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 24 recites the limitation "the fixing means" in line 5. There is insufficient antecedent basis for this limitation in the claim.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 13-20 and 22-26 are rejected under 35 U.S.C. 102(b) as being anticipated by Smith (5480035).

Re claims 13 and 25, Smith discloses a crockery basket comprising a framework (dishwasher rack), the framework including a common edge (the edge provided by the middle additional wire 15), at least one rack (shelf 20) and a plurality of holding elements (plates 22) hold the rack at different height positions on the basket, the holding elements are secured on the common edge.

Re claims 13-17 and 22-23, a group of holding elements is defined by (hubs 50, 51 on the plates or end caps 22). The holding elements are indirectly secured on the common edge as the

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holding elements are attached to plate 22 much like the holding elements 5 are indirectly secured on the common edge because they are secured to ladder 4. A first group of holding elements (first device) is provided on a first end cap 22 and a second group of holding elements (second device) is provided on a second end cap 22. The groups of holding elements on an end cap 22 are configured as a fixing ladder with one holding element located above another to make the height of the shelf adjustable.

Re claim 18-20 and 24, insofar as disclosed by applicant the horizontal meshes merely need to be horizontal members. Smith discloses horizontal meshes 15 arranged one above the other, the rack has fixing structure as the bars or wires of the rack are fixed to the holding elements which engage the horizontal meshes

Re claim 24, the rack has a mechanical stop that engages a stop (ribs 56, 57) of the end cap 22 (see col. 4, lines 3-7 and Fig. 2-3 and 5-7).

Re claim 26, legs 58, 62 extend on opposite sides of a vertical wire.

Claims 27-30 are rejected under 35 U.S.C. 102(b) as being anticipated by Stottmann et al. (5431294)(Stottmann).

Stottmann discloses a crockery basket comprising a framework (one of baskets 31 or 32 and handle 52), a rack (cover 65), holding elements (bar 60, ribs 61, wall 75, ribs 76, walls 78 and 79) to hold the rack at different height positions (vertically upright and horizontal), the rack is pivotal between horizontal and vertical positions, support clip (elements 70-73) to form a mechanical stop (see Fig. 3 at 60, 72, 73) engageable with the framework at pivot pin 60 when the rack is in the horizontal position.

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Re claim 30 the horizontal mesh is the bottom wall of the basket shown to be mesh in the plan view of Fig. 5.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over Smith.

Smith discloses the fixing structure of the rack and the first device made of plastic as col. 3, lines 12-16 discuss the polypropylene material of the first device. Smith discloses the invention except for the plastic material of the fixing structure of the rack. Official notice is taken that racks of plastic are well known. It would have been obvious to modify the material of the rack to be plastic to allow easier manufacturing by molding, durability, and a readily available material.

Applicant's arguments filed May 27, 2009 have been fully considered but they are not persuasive. Applicant has not closely reviewed Smith. Smith has the common edge claimed.

Applicant's arguments with respect to claims 25-30 have been considered but are moot in view of the new ground(s) of rejection.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after

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the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to /Stephen J. Castellano/ whose telephone number is 571-272-4535. The examiner can normally be reached on increased flexibility plan (IFP).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony D. Stashick can be reached on 571-272-4561. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Stephen J. Castellano/
Primary Examiner
Art Unit 3781

sjc